

REMARKS

A. Allowable Subject Matter

Applicants again appreciate the Examiner's acknowledgment that the subject matter of claims 4, 6, 9, 10, 15, 17, 20, 21, 28, 30, 33 and 34 would be allowable if amended and placed into independent form. However, Applicants submit that these claims as well as their respective independent and intervening claims are allowable without such amendment for at least the following reasons.

B. The §103 Rejections

Claims 1-3, 5, 7, 8, 11-14, 16, 18, 19, 22-27, 29, 31, 32, 35 and 36 were rejected under 35 U.S.C. §103(a) as being unpatentable over the combination of U.S. Patent No. 6,212,389 to Fapojuwo ("Fapojuwo") in view of U.S. Patent Application Publication No. 2002/0102976 to Newbury et al ("Newbury"). The Applicants respectfully disagree and traverse these rejections for at least the following reasons.

In the Office Action the Examiner acknowledges that Newbury fails to disclose the feature of adjusting a transmission characteristic threshold in response to the value of a first balancing metric relative to a second balancing metric ("adjustment step"). To make up for this deficiency in Newbury the Examiner relies upon Fapojuwo.

Initially Applicants note that Fapojuwu does not appear to disclose balancing metrics. Even if Fapojuwu's "macrocell/microcell traffic channels" could somehow be considered balancing metrics, there is no disclosure (or suggestion) in Fapojuwu of a transmission characteristic threshold that is adjusted in response to the value or number of macrocell channels relative to the value or number of microcell traffic channels. The only threshold that appears to be discussed in Fapojuwu is a macrocell channel threshold. However, this threshold does not appear to be adjusted due to a relationship between the value or number of macrocell traffic channels *relative to* the value or number of microcell traffic channels, or vice-versa.

Because the combination of Newbury and Fapojuwu does not disclose or suggest the adjustment step, the Applicants respectfully submit that the subject matter of claims 1-3, 5, 7, 8, 11-14, 16, 18, 19, 22-27, 29, 31, 32, 35 and 36 would not have been obvious to one of ordinary skill in the art at the time the present application was filed based on reading the disclosures of Newbury and Fapojuwu.

Accordingly, the Applicants respectfully request withdrawal of the rejections and allowance of claims 1-3, 5, 7, 8, 11-14, 16, 18, 19, 22-27, 29, 31, 32, 35 and 36.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact John E. Curtin at the telephone number listed below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 50-3777 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

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